IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 8556 of 1987

Date of Decision: December 13, 2006

Jarnail Singh and another

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. G.S. Bal, Advocate
for the petitioner.

Mr. Pawan Sharda, AAG, Punjab,
for the respondents.

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M.M.S. BEDI, J.

This order will dispose of two writ petitions bearing CWP Nos. 8556 of 1987 and 14461 of 1994, as both involve the similar questions of law and fact having been filed by Technical Instructors in the Education Department seeking parity with the Vocational Masters of the same Department on the principle of 'equal pay for equal work'. For the sake of

convenience, facts have been taken from the amended Civil Writ Petition 8556 of 1987.

Briefly stated the facts of the case are that petitioner No.1 after passing matriculation examination and three years Diploma in Mechanical Engineering was appointed as Mechanical Instructor on adhoc basis w.e.f. May 30, 1977 in the pay scale of Rs.200-450/- and was regularized w.e.f. October 1, 1980 in the pay scale of RS.570-1080. Similarly, petitioner No.2 being an ex-serviceman, after 15 years service in Air Force on the basis of his Diploma in Electrical Engineering (equivalent to three years Diploma in Electrical Engineering) obtained during enrolment in Indian Air Force, was appointed as Electrical Instructor in the Education Department in the year 1979 and was subsequently regularized vide letter dated November 23, 1982. The post of Mechanical/ Electrical Instructor is the post known as Technical Instructor and the appointees impart technical education to the students studying in higher secondary schools in their respective disciplines. The cadre strength of the Technical Instructors in the State of Punjab is less than 10 and the said cadre is diminishing cadre, as the Punjab Government had stopped recruitment to these posts and now the persons appointed, instead of Technical Instructors are Vocational Instructors. The petitioners claim that the qualifications for the posts of Technical Instructors and Vocational Masters are exactly same. In view of the parity of the nature of duties, the Technical Instructors are entitled to the similar pay scale as is being given to the Vocational Masters in the Education Department. The nature of duties and responsibilities of Technical Instructors and Vocational

Masters are same. It is alleged that the subjects taught by Technical Instructors and the Vocational Masters are the same.

The petitioners have also pleaded in the writ petition that the pay scale of Technical Instructors was initially Rs.200-450 which was later on revised to Rs.570-1080 on the recommendations of the Second Pay Commission w.e.f. January 1, 1978. Till then the posts of the petitioners were equated with that of Sectional Officers in the PWD, Punjab. The pay scale of Sectional Officer in PWD were revised from s.200-450 to Rs.570-1080 but on recommendations of the report of the Punjab Government Anomalies Committee, grade of Sectional Officer of PWD was further revised to Rs.700-1200/- but the pay scale of the petitioners was not revised to Rs.700-1200. A letter regarding revision of pay scales of Sectional Officer has been attached as annexure P-4 to the writ petition. On the basis of equation of the posts of the petitioners with that of Sectional Officers, the petitioners claim higher pay scale equivalent to that of Sectional Officers on account of the enhancement of the pay scale of Sectional Officers.

The claim of the petitioners for pay parity with Vocational Masters has been contested in both the writ petitions. In order to reflect the distinction between the Technical Instructors and Vocational Masters, it has been averred in the written statement that the petitioners were initially appointed as Technical Instructors in the scale of Rs.200-450/- which was further revised to Rs.570-1080/- on the recommendations of the Second Pay Commission w.e.f. January 1, 1978. The Technical Instructors were appointed under the Technical Education Scheme named as Qualitative

Improvement as Secondary Education. The posts of Technical Instructors is of lower cadre and a Technical Instructor can be promoted as Vocational Master vide notification dated July 8, 1995 (R-1). The petitioner Jarnail Singh was promoted as Vocational Master vide order dated September 19, 2000 (R-2) but petitioner No.1 was debarred as he did not join his duty at his place of posting within stipulated period. Petitioner No.1 had applied to the respondents to promote him as Vocational Master vide annexure R-3 and the case of his promotion is under the consideration of the Department. So far as the Vocational Masters are concerned, their appointments were made under the vocationalisation of the Educational Scheme, which was introduced in the year 1975 in the grade of Rs.300-600/- revised w.e.f. January 1, 1978 to Rs.700-1300/-. In view of the said factual position, the equation of the posts of Technical Instructors with the Vocational Masters in the higher grade has been opposed. It is pertinent to mention that vide notification dated July 8, 1995, the Punjab State Education Class III (School Cadre) Service (First Amendment) Rules, 1995, (for short, 'the 1995 Rules'), have been framed. As per Appendix 'A' and 'B', the mode of appointment of Vocational Masters has been provided as 25% from amongst the posts of Technical Instructors, Masters crafts man Grade II, Draftsman, Junior Inspector, etc.

Mr. G.S. Bal, learned counsel for the petitioners has vehemently urged that on the basis of the parity of the eligibility conditions of Technical Instructors and Vocational Masters, the parity of pay scales has to be maintained in the two categories of the same Department. As the job

of the Technical Instructors is similar as that of Vocational Masters, on the basis of the equality of nature and responsibility of the duties as Technical Instructors, the petitioners should be granted the pay scales of Vocational Masters. So far as the 1995 Rules are concerned, Mr. Bal contended that this is a malafide act on the part of the respondents to deprive the petitioners, the parity. The above said 1995 Rules have been framed during the pendency of the writ petition, with an oblique motive to prejudice the rights of the petitioner.

I have heard the learned counsel for the petitioners as well as learned counsel for the respondents. The equation of the posts of Technical Instructors with Vocational Masters working in the Education Department has been sought on the principle of 'equal pay for equal work'. It has been urged that the qualification of the Technical Instructors as provided in the rules is Matric and Diploma in Engineering. The posts of Vocational Masters were created in Education Department w.e.f. August 1, 1975, as reflected in the averments in Civil Writ Petition No. 14461 of 1994. The initial qualifications prescribed for the posts of Vocational Masters was, a Degree of Engineering in Mechanical/ Electrical/ Civil, against the prescribed pay scales for the post as Rs.300-600/-. On account of non-availability of degree holders for the posts, the Government reduced the qualification for appointment as Vocational Masters prescribing matriculation with three years Diploma which is similar qualifications for the posts of Technical Instructors. Vide letter dated November 1, 1983, issued by respondent No.2, the pay scale of Rs.300-600/- was granted to the

Vocational Masters w.e.f. the date of their joining and the pay scale of Rs.700-1300/- was granted w.e.f. January 1, 1978. The qualifications for appointment of Vocational Masters was approved by the Government vide letter dated October 20, 1983 (P-6), prescribing of Matriculation with second division and three years Diploma in Engineering. The pay scale of Rs.700-1300/- was granted. A number of representations were submitted by the Technical Instructors claiming that the petitioners were possessing the same qualifications and were teaching +1 and +2 Classes all those subjects which were being taught by Vocational Masters in the Education Department but on account of their diminishing cadre, pay scales of the petitioners were not enhanced. By filing this writ petition, the petitioners seeking a declaration from this Court regarding the equation of the posts of Technical Instructors with that of Vocational Masters working in the Education Department on the basis of similar duties performed by them whereas the said fact has been vehemently denied by the respondents. Whether such an exercise is permitted to be undertaken by Courts has to be scrutinized on the basis of the averments made by the petitioners and the counter filed by the respondents. The petitioners are required to make out an absolutely clear case that the pay scales provided to the Vocational Masters tentamount to discrimination towards the petitioners, they being the similarly circumstanced getting different pay scale in clear violation of doctrine of 'equal pay for equal work'. The equation of posts and equation of salaries is a complex matter, which is generally left to the expert bodies. The interference by the Courts is warranted only when there is cogent

material on record to come to a firm conclusion that great error had crept in while fixing the pay scale for a given post and that the Court's interference is absolutely necessary to undo the injustice. Job evaluation is certainly a difficult and time consuming task and requires a constant study of the external comparison and internal realities of the job requirements of particular post. There are a large number of factors which provide guidance regarding the equality of two posts. The equality is certainly not based on distinction or the nature of working alone. The factors like responsibilities, realities, experience, confidentiality involved, functional need and requirement commensurate with the position in the hierarchy, the qualifications prescribed as per the Rules for the posts set out for comparison are required to be kept in mind. Some times, the quality of the work apparently appears to be similar but the quality required may be different. The nature of the quality and quantity for a particular post cannot be determined solely on the basis of the averments in the writ petition and reply of the interested parties. The said determination can be done by expert bodies like Pay Commission and Executive bodies constituted by the Government. The said authorities are certainly the best judges to evaluate the nature of duties, responsibilities for the purpose of equation of posts. In **State of U.P. v. G.P. Chaurasia**, (1989) 1 SCC 121, it has been observed that the pay commission and the Government are the best judges to evaluate the nature of duties, responsibilities and all relevant factors for the purpose of determining the equation of two posts. In a case of **Union of India v. Tarit Ranjan Das**, (2003) 11 SCC 658, the pay parity was sought by

Stenographers Grade II working in the office of the Geological Survey of India with the Stenographers Grade 'C' of the Central Secretariat. The decision of the Administrative Tribunal and Division Bench of the High Court equating the two posts for the purpose of pay scales was set aside in SLP by the Hon'ble Supreme Court holding that the equality is not based on designation or the nature of the work alone. There are several other factors like responsibilities, reliability, experience, confidentiality involved, functional need and requirements commensurate with the position in hierarchy, the qualifications required which are equally relevant. The Supreme Court held that the said aspects have been completely lost sight off by the Tribunal and the High Court. The order of grant of pay parity to the Stenographers Grade II in the office of the Geological Survey of India with Stenographers Grade 'C' of Central Secretariat was set aside. In **State of Haryana and another v. Haryana Civil Secretariat Personal Staff Association**, (2002) 6 SCC 72, this Court had equated the posts of PAs serving in Haryana Civil Secretariat with P.As. in the Central Secretariat on the principle of 'equal pay for equal work'. The Hon'ble Supreme Court while setting aside the order of High Court in paras No.8 and 10 has observed as under:-

> "The High Court has ignored certain settled principles of law for determination of the claim to parity of pay scale by a section of government employees. While making copious reference to the principle of equal pay for equal work and equality in the

matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same designation under the Central Government. Such comparison based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was unrebutted. Even assuming that there was no specific rebuttal of the averment in the writ petition, that could not form the basis for grant of parity of scale of pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities and the qualifications for recruitment to the posts of PAs in the State Civil Secretariat with those of PAs of the Central Secretariat."

Further in para 10 it was held as follows:-

"The claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted in *Secy., Finance Deptt. Case,* 1993 Supp (1) SCC 153, are to be considered keeping in view the

prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. The priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable, ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. In the present case, the High Court has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by

the employers which govern the administration of the cadre."

In view of the abovesaid direction, a declaration regarding the equation of the pay scale of Technical Instructors with the pay scale of Vocational Masters cannot be given to compel the Government to treat both the employees at par.

The pay scale of the Technical Instructors w.e.f. 1960 has been notified as follows:-

Year	Scale
In 1960	Rs.125-300
In 1968	Rs.200-450/-
	Rs.450-500 (SG)
In 1978	Rs.570-1080/-
After 1986	Rs.1500-2640/-, as per conversion table.

So far as the pay scales of Vocational Masters (Electrical/ Mechanical/ Civil/ Auto Engineers) is concerned, the said posts were introduced in the year 1975, under the Vocationalisation of Educational Scheme, in the grades which were subsequently enhanced as follows:-

Year	Scale
In 1975	Rs.300-600 (for degree holders) Rs.200-450/- (for Diploma Holders) (on relaxation of the qualifications from Degree to Diploma, the Diploma holders were given the grade of Rs.300-600 instead of Rs.200-450 w.e.f. their appointments).
In 1978	Rs.700-1300
On 1986	Rs.1800-3200

At the time of introduction of the posts of Vocational Masters, the rule framers in their wisdom had kept in mind the nature of the duties and responsibilities of the newly created posts keeping in view the existing posts of Technical Instructors. Had the legislature or pay commission considered the nature of duties and responsibilities of Vocational Masters at par with Technical Instructors, the equality would have been reflected in the pay scales and the Vocational Masters also should have been granted the pay scales same as that of Technical Instructors; (ii) the compelling circumstances for relaxing the educational qualification for appointment of Vocational Masters i.e. Degree in Engineering; on account of non-availability of the incumbents and the other circumstances cannot be appreciated as it does not fall within the scope of judicial review in this writ petition. The fact remains that the eligibility conditions and recruitment Rules for Vocational Masters and Technical Instructors were distinct from the very inception. For the purpose of pay parity between the two posts, the similarity of eligibility qualifications is not the sole criteria in equation of the pay scales. The post of Vocational Master has been kept at higher pedestal in hierarchy and the post of Technical Instructor has been kept as a feeder post for higher post of Vocational Master in higher pay scale as per the statutory Rules framed during the pendency of the writ petition called Punjab State Class III (School Cadre) Service Rules, 1978. 25% posts have been kept reserved for promotion to the posts of Vocational Masters. It will not be prudent to equate the pay scale of feeder posts with that of a promotional post. I have also considered the claim of pay parity of the

petitioner with the Sectional Officer of PWD Department and I am of the opinion that no order specifically equating the posts of Sectional Officer of PWD with Technical Instructors has been placed on record. The claim of the petitioners for higher pay scale in this case is on the basis of doctrine of 'equal pay for equal work'. The equation of the nature of duties of Sectional Officer and that of Technical Instructors in different departments would not be permit this Court to consider the said two posts are equated for the purpose of pay scale. This is not the contention of Mr. Bal that the cadre of Technical Instructors is a diminishing cadre for which reason it has been discriminated against. It is apparent from the 1995 Rules care has been taken for promoting the Technical Instructors as Vocational Masters by providing an avenue for them for promotion. The legislature cannot be attributed malafide as has been claimed by the counsel for the petitioner. There is no ground to doubt the reasonableness of the 1995 Rules, providing the post of Technical Instructor as a feeder post for the Vocational Master.

In view of the abovesaid discussion, I find no merit in these petitions and accordingly, the same are dismissed.

December 13, 2006 (M.M.S.BEDI)
sanjay JUDGE